

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

Estate of OLIVE BELLE NEWMAN,  
Deceased.

PETER NEWMAN,

Petitioner and Respondent,

v.

DAN NEWMAN,

Objector and Appellant.

E052871

(Super.Ct.No. PROPS0900926)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cynthia Ann  
Ludvigsen, Judge. Affirmed.

Dan Newman, in pro. per., for Objector and Appellant.

Peter Newman, in pro. per., for Petitioner and Respondent.

Daniel Newman (Daniel<sup>1</sup>) appeals following an order settling first and final report

---

<sup>1</sup> Because the appellant and respondent are father and son who share the same surname, we use their first names.

of administrator, which was approved without objections being filed. On appeal, Daniel complains in several ways under separate headings about inherent unfairness of the proceedings which culminated in an order admitting the will of his mother to probate and appointing Peter Newman, Daniel's son, as administrator of the estate. Because no objections were filed to the petition to admit the will to probate, no timely appeal was taken from that order, and no challenge was made to the first and final report of the administrator, we affirm.

### **BACKGROUND**

The record on appeal is incomplete. We assume that on some date Olive Belle Newman (Olive) died testate because the record contains a notice of petition to administer her estate. Daniel Newman (Daniel) is Olive's son, and Olive's will left him nothing. Olive's will and the Newman Family Trust originally named Daniel's brother Lawrence as administrator and successor trustee if her spouse was unable to serve, but in 2002, the trust was amended to name Peter Newman (Peter) as successor trustee and sole beneficiary of the trust. Peter is Olive's grandson and Daniel's son.<sup>2</sup> Lawrence, Daniel's brother, predeceased Olive.

Peter filed a petition for probate of Olive's will and for letters of administration on December 30, 2009. Notice of the petition was sent by mail to Daniel twice: once on

---

<sup>2</sup> At the initial hearing held on March 23, 2010, the court indicated that it needed to continue the hearing because notice was not complete as to a granddaughter. Daniel interrupted the court to state that "Yes, these are all my children." Since Daniel's deceased brother left no children, we infer that Peter is Daniel's son.

January 6, 2010, and again on February 17, 2010. On March 23, 2010, at a hearing on the petition, Daniel personally appeared and informed the court of his intention to object. The court directed Daniel to file the appropriate pleadings and continued the hearing until May 18, 2010, so he could find an attorney and do so.

On May 18, 2010, Daniel appeared at the continued hearing but had not filed any written objections, although he brought paperwork pertaining to the Oregon probate proceedings relating to his brother. Daniel orally indicated he objected to the petition. The court informed Daniel that if he believed his mother's will was invalid, he needed to file a will contest and objections to the instant petition. Over the objections of the estate's attorney, the court gave Daniel another opportunity to file objections in writing. The court emphasized that June 1, 2010, was the deadline for filing, that the objections must be in writing, that any objections not filed by the deadline would be deemed waived, and that any objections filed after that date would not be accepted.

On June 22, 2010, Daniel appeared at the continued hearing, but the court had not received any written objections to the petition. Daniel explained he had attempted to do so twice but that his pleadings had been rejected by the clerk's office. He indicated he had an unfiled copy of a petition to administer the estate that had been rejected for filing. He also orally asserted that the will was invalid for lack of testamentary intent and the undue influence of his son. However, he had not filed any written objections on these grounds.

The court could not find any record of any attempted filings or rejections. In an effort to locate the checklist sent by the clerk's office with the rejected pleadings, the

court continued the matter for one more week. On June 30, 2010, Daniel appeared telephonically and informed the court he had completed the items on the rejection checklists but received a third rejection. Opposing counsel requested that the court approve the petition in the absence of objections, and the court so ordered. On July 16, 2010, an order appointing administrator with will annexed was filed. Letters of administration issued on July 19, 2010.

On January 27, 2011, a hearing was held on the first and final report and petition for allowance of fees. Daniel did not appear. The court found notice of the hearing had been given as required by law, approved the statutory and extraordinary attorney's fees requested, and signed the order settling the first and final report of the administrator of the estate. That same day, Daniel filed a notice of appeal.<sup>3</sup>

## **DISCUSSION**

Daniel's appeal poses three questions which are all interrelated: (1) Whether he was denied a fair hearing; (2) whether the trial court's requirement of conformity with procedures for filing in Probate Court violated his due process rights; and (3) whether he was denied a fair hearing by judicial bias and antipathy or hostility toward self-represented litigants. Peter, as respondent, argues that (1) Daniel waived any challenges by failing to file proper objections to the petition after being given numerous opportunities; and (2) the appeal is untimely with respect to challenges to the orders

---

<sup>3</sup> Daniel incorrectly indicated that the appeal was from a judgment after an order granting a summary judgment motion.

admitting the will to probate. We agree with Peter.

**1. Challenges to the Order Granting the Petition to Admit the Will to Probate and Appointing Peter as Administrator Have Been Forfeited By the Failure to Timely Appeal.**

There is no right of appeal from probate orders except those specified in the Probate Code. (*Varney v. Superior Court* (1992) 10 Cal.App.4th 1092, 1098; *Estate of Weber* (1991) 229 Cal.App.3d 22, 24.) The reason for the rule is to prevent delay in the distribution of estates. (*Varney*, at p. 1098.) However, an appeal may be taken from an order made appealable by the provisions of the Probate Code. (Code Civ. Proc., § 904.1, subd. (a)(10).) The register of actions indicates that the order filed on July 16, 2010, admitted the will to probate, appointed Peter as administrator, and authorized administration of the estate. This was an appealable order. (Prob. Code, § 1303, subd. (a) [order granting or revoking letters to a personal representative is appealable]; Prob. Code, § 1303, subd. (b) [order admitting a will to probate is separately appealable].)

The time for filing the notice of appeal was 180 days after the order, since the record does not show that a notice of entry of the judgment or order was filed or that a copy of the filed order was ever served on Daniel. (Cal. Rules of Court, rule 8.104(c).) Although the appeal was filed within 60 days of the order settling the first and final account and report of the administrator, which was filed on January 27, 2011, Daniel did not oppose that report in the trial court and does not challenge any aspect of that order on appeal.

Nevertheless, even with the extended time in which to file the notice of appeal,

Daniel's appeal was filed more than 180 days after the entry or filing of the order.<sup>4</sup> Thus, the appeal from the order dated July 16, 2010, following the hearing which took place on June 30, 2010, is untimely. In the absence of a timely appeal, the order admitting the will to probate, appointing Peter as the administrator, and authorizing distribution of the estate is a conclusive adjudication of its status and the lack of an appeal forfeits any challenges to that order. (*In re Estate of Exterstein* (1934) 2 Cal.2d 13, 16; *Estate of Kearns* (1954) 129 Cal.App.2d 832, 837.)

## **2. Daniel's Failure to File Objections Forfeited Any Claims Thereunder.**

It is undisputed that after several continuances were granted to afford Daniel the opportunity to file written objections to Peter's petition to administer the estate, he failed to file any. Because no objections were filed within the permissible time frames, even if we could reach the merits of Daniel's appeal, we could not grant relief. In the absence of written objections, Daniel was not entitled to litigate those facts. (*Voigt v. Superior Court of Los Angeles County* (1956) 146 Cal.App.2d 674, 676.) Further, those points may not be considered for the first time on appeal. (*Baychester Shopping Center, Inc. v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2008) 165 Cal.App.4th 1000, 1007-1008.)

Probate Code section 1043, subdivision (a), provides that any interested person may appear and make a response or objection to a pending petition in writing at or before

---

<sup>4</sup> The notice of appeal was filed 196 days after the filing of the order granting Peter's petition.

a probate hearing. In addition, such a person may make an oral response or objection at the hearing. When an oral response or objection has been made, the probate court then has the discretion to grant a continuance for the purpose of allowing a response or objection to be made in writing. (Prob. Code, § 1043, subd. (b).) This section expressly allows a continuance for one purpose only: to make a written response or objection; it does not allow for a continuance to conduct discovery in the absence of a response or objection of some kind. (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 988.)

One who contests the appointment of a personal representative, or the validity of the will, may file objections. (Prob. Code, §§ 8004, 8250.) The due execution and validity of a will are determined at the time the will is admitted to probate. (*Estate of Neubauer* (1958) 49 Cal.2d 740, 747.) If no contest is filed within the time set for in the Probate Code, those determinations are final and conclusive. (*Ibid.*) In such circumstances, the order admitting the will to probate becomes and remains res judicata, is impervious to any assault, and the will cannot be set aside. (*O'Brien v. Markham* (1940) 37 Cal.App.2d 381, 389.)

In the present case, the court continued the hearing on Peter's petition three times between May 23, 2010, and June 30, 2010, when the court finally approved the petition, admitted the will to probate, and appointed Peter as administrator. At the time of each continuance, the court repeatedly advised Daniel of the need to file written objections in proper form. Daniel failed to do so.

In the trial court and again on appeal, Daniel attempts to excuse his failure to file objections on the ground he is an unrepresented litigant. That is not an excuse for the

failure to file written objections, especially after numerous opportunities were provided by the lower court. Lack of legal counsel does not entitle a litigant to special treatment. (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) “A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

Under the law, a party may choose to act as his or her own attorney. (*Nwosu v Uba* (2004) 122 Cal.App.4th 1229, 1247.) Such a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. (*Ibid.*) As the reviewing court in *Nwosu*, held, as is the case with attorneys, self-represented (pro. per.) litigants must follow correct rules of procedure. (*Ibid.*, citing *Kabbe v. Miller* (1990) 226 Cal.App.3d 93, 98.) Otherwise, ignorance is unjustly rewarded. (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055.)

In *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, the reviewing court discounted the notion of ignorance as an excuse for the filing of a frivolous appeal. There, the court took judicial notice of the number of appeals filed by the appellant over a course of 22 months to conclude that at the time appellant chose to file the current appeal, he was fully aware of the nature and extent of his appellate undertaking. (*Id.* at p. 193.) In the present case, Peter’s attorney informed the court that Daniel had a law school degree which Daniel did not deny. This causes us to discount the notion that Daniel could not comply with the court’s instructions and file the necessary objections.

Like the appellant in *Bistawros*, Daniel's failure to follow proper procedure for presenting his objections to the probate of his mother's will, while claiming ignorance, is not sufficient to preserve those objections for appellate review. Daniel forfeited any challenges to Peter's petition by failing to file the objections. He similarly failed to object to Peter's first and final report, precluding any appellate challenge to the more recent order. Because there were no properly filed objections, the court did not err in granting the petition.

### **3. The Proceedings Were Fundamentally Fair.**

Woven throughout the appeal are challenges to the fairness of the proceedings in the trial court. Daniel claims he had no opportunity to be heard, but the record refutes this assertion. He was given multiple opportunities to present his objections to the petition in writing. He also claims the trial court unreasonably failed to "aid [his] litigation," asserting that the trial court should not have conducted a hearing "until it is fully established there is no way whatsoever for the litigant to file except by holding his or her hand and leading them step by step through the filing process." Daniel cites no authority for this position.

He also appears to argue that we should measure the trial court's actions by a higher standard and that the court's rulings "should not be part of the permissible actions available when unrepresented litigants appearing in trial court are routinely denied access to the legal system in probate matters" because "[d]enying access based on financial difficulties associated with finding representation and is in and of itself a miscarriage of justice." Further, he contends that "the court acted with excessive zeal in the abuse of

procedure and due process in not helping or helping to gain assistance or assistive information necessary for the Appellant to file pleadings in any manner whatsoever, . . .” Daniel cites no authority for these propositions.

As we have shown in section 2, it is improper for a trial court to treat represented litigants differently from unrepresented litigants unless applying equal treatment would result in a denial of access to the courts. (*Jameson v. Desta* (2009) 179 Cal.App.4th 672, 684.) Daniel has not cited any authority requiring a trial court judge to assist a litigant in preparing filings, and, given his legal education, his claims of ignorance are not well taken. The trial court showed great deference to Daniel due to his self-represented status but it was neither permitted nor required to do more. Daniel’s ability to litigate his objections to the petition was impaired only by his failure to file a written objection to the petition despite several opportunities to do so.

### **DISPOSITION**

The judgment is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

KING

J.

MILLER

J.